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09/915,188

07/25/2001

John C. Dute

A-70825/RMA

5259

1678 7590 10/07/2008  
MARSHALL & MELHORN, LLC  
FOUR SEAGATE - EIGHTH FLOOR  
TOLEDO, OH 43604

EXAMINER

CHANG, JUNGWON

ART UNIT

PAPER NUMBER

2454

MAIL DATE

DELIVERY MODE

10/07/2008

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOHN C. DUTE,  
LAWRENCE A. BOYD II and DONALD P. WOOLWORTH

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Application 09/915,188  
Technology Center 2100

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Mailed: October 7, 2008

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Before DALE M. SHAW, *Deputy Chief Appeals Administrator*.

SHAW, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on July 10, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

## REPLY BRIEF

A Reply Brief was filed on July 27, 2007 in response to the Examiner's Answer mailed May 30, 2007. The Examiner acknowledged the Reply Brief in a communication mailed October 22, 2007 which appeared to contain rebuttal. Section 1208 (II) of the Manual of Patent Examining Procedure (Eighth Edition, Rev. 6, Sept. 2007) states:

If a reply brief is not in compliance with 37 CFR 41.41, the examiner must notify appellant that the reply brief has not been considered and the reason for non-compliance. The examiner may use form paragraph 12.182 on Form PTOL-90 to notify the appellant.

If a reply brief is filed in compliance with 37 CFR 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. The examiner may use form paragraph 12.181 on Form PTOL-90 to provide the acknowledgement.

In addition, the examiner may:

(A) Withdraw the final rejection and reopen prosecution to respond to the reply brief (see MPEP § 1207.04) or

(B) Furnish a supplemental examiner's answer responding to any new issue raised in the reply brief (see MPEP § 1207.05).

Any supplemental examiner's answer responding to a new issue raised in a reply brief must be approved by the Technology Center (TC) Director or designee.

Accordingly, it is

ORDERED that the application is returned to the examiner:

- 1) for a proper response to the Reply Brief filed July 27, 2007; and
- 2) for such further action as may be appropriate.

dms:psb

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